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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72

PETITION FOR PARTIAL STAY PENDING JUDICIAL REVIEW

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August 14, 1997

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PETITION FOR PARTIAL STAY PENDING JUDICIAL REVIEW

U S WEST, Inc. ("U S WEST") hereby requests that the Federal Communications Commission ("Commission") grant a partial stay pending judicial review of that portion of its First Report and Order in the above-captioned docket[1] which has the unfair and seemingly unintended effect of permitting customers who do not use U S WEST's local transport to avoid payment of the implicit tandem switch and universal service support contained in the residual transport interconnection charge ("RTIC").

A partial stay of the First Report and Order is clearly warranted in this case. The implicit tandem switch and universal service support contained in the RTIC as

[1] In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, FCC 97-158, rel. May 16, 1997 ("First Report and Order"), appeals pending sub nom. Southwestern Bell Telephone Company v. FCC, Nos. 97-2618, et al. (8th Cir.).

of January 1, 1998 is unrelated to U S WEST's provision of local transport (except to the extent that the Commission considers implicit support for rural areas to be a local transport-related cost). Therefore, permitting U S WEST's customers to evade payment of the RTIC by providing their own local transport is arbitrary, capricious, and discriminatory. The Commission's RTIC rule will have a severe negative impact on U S WEST, which has one of the largest RTICs in the industry. Absent a stay, the resulting artificial price distortion in the local transport market will cause irreparable harm to U S WEST while providing an unwarranted and uneconomic competitive advantage to competitive access providers ("CAPs") and Interexchange Carriers ("IXCs") that utilize U S WEST's local switching, but not its local transport. U S WEST requests that the Commission act on this petition by August 29, 1997.

I. INTRODUCTION AND SUMMARY

In the First Report and Order, the Commission implemented a comprehensive transition plan to shift the recovery of non-traffic sensitive ("NTS") costs from usage-based access charges to more economically efficient, flat-rate charges.[2] Specifically, the transition plan allows price cap companies (including U S WEST) to increase their Subscriber Line Charges ("SLCs") and to implement the new Presubscribed Interexchange Carrier Charges ("PICCs"). In the initial phase of SLC increases, which occurred on July 1, 1997, the SLC for multi-line

[2] First Report and Order ¶¶ 6-7. This action, when properly carried out, has the effect of eliminating implicit subsidies from Local Exchange Carriers' ("LECs") access rates.

businesses increased to full cost or $9.00, whichever is lower. The next phase of SLC increases and the implementation of PICCs will occur on January 1, 1998.

A number of other inter-related changes will take place on January 1, 1998. The overall size of the Carrier Common Line ("CCL") recovery amount will increase as the costs associated with line ports, marketing expenses, and the new Universal Service Fund payment are moved into the CCL. The increased SLCs and the PICCs will provide for partial recovery of the increased CCL cost.

In addition, that portion of the TIC which the Commission has determined is transport related will be moved from the TIC to specific local transport elements.[3] After the January 1, 1998 cost reassignment, the remaining RTIC amount will be reduced by the amount of the increased SLCs and the PICCs to the extent that a surplus exists after recovery of the increased CCL cost. U S WEST anticipates that the increased SLCs and the PICCs will not be sufficient to eliminate its increased CCL charge. As a result, U S WEST will have a large RTIC remaining in 1998.[4]

U S WEST's RTIC will be comprised mostly, if not entirely, of two types of implicit support. The tandem switch support component of the RTIC represents that portion of the remaining two thirds of tandem switch costs paid by dedicated transport purchasers until such costs are shifted to the tandem switching rate

[3] Id. ¶¶ 217-23.

[4] The Commission's transition plan gradually phases out the RTIC by requiring Price Cap companies, beginning on July 1, 1997, to target the price cap productivity (X-factor) adjustment in each annual access tariff filing to reduction of the RTIC. Id. ¶ 236.

element in two equal installments on January 1, 1999 and January 1, 2000.[5] In effect, when a carrier purchases tandem switching from U S WEST, it will continue to benefit from support for the service provided by purchasers of other switched access services. The cost to U S WEST for this component of the RTIC will be approximately $36 million in 1998.[6]

In addition, the implicit universal service support component of the RTIC represents universal service support and other hard-to-trace cost factors that historically have been assigned to the RTIC as a result of the complex and imperfect system of rate regulation.[7] In the First Report and Order, the Commission acknowledged that "the additional costs of rural transport currently are recovered through the TIC."[8] The Commission's finding is supported by extensive evidence submitted by U S WEST in this and other proceedings demonstrating that a significant portion of its RTIC is traceable to "rural implicit support."[9] Fundamentally, this amount represents the transport costs associated with the trunks needed to serve the remote rural areas that comprise much of U S WEST's

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[5] Id. ¶ 218.

[6] See attached Affidavit of George M. Kuwamura, Jr. at 2 (August 14, 1997).

[7] First Report and Order ¶¶ 224-26.

[8] Id. ¶ 226.

[9] See, e.g., U S WEST Comments at 63-64, 70-72 (filed Jan. 29, 1997) (proposing that implicit universal service support be funded through an explicit flat-rate charge); U S WEST Communications, Inc. Petition for Waiver at 11 (filed July 24, 1996).

territory.[10] Since the transport costs associated with these trunks is several times more than the cost of hauling an equivalent unit of traffic in larger cities, the averaging of the transport rate charged to all customers as part of the TIC causes rural transport support to flow from urban transport rates.[11] The cost to U S WEST for the implicit universal service support component of the RTIC will be approximately $156 million in 1998.[12]

In an eleventh hour decision made after the comment period had closed in this proceeding, the Commission modified its rules to prohibit U S WEST from applying the RTIC to traffic that does not use U S WEST's local transport.[13] This rule arbitrarily discriminates against U S WEST by allowing its competitors to avoid payment of the implicit support contained in the RTIC by providing their own local transport, even though U S WEST will continue to incur the costs contained in the RTIC. Because these RTIC costs are unrelated to U S WEST's costs in providing local transport that would be replaced with CAP-provided transport, there is no principled basis on which to justify the Commission's action. Further, the Commission's discriminatory application of the RTIC creates an artificial price distortion that gives U S WEST's competitors an unfair price advantage in the local

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[10] U S WEST Communications, Inc. Petition for Waiver at 11. U S WEST has more than 30 million circuit miles serving long haul traffic (more than 80 miles on average) and more than 3 million circuit miles serving average hauls of less than 10 miles. Id. at 11-12. As a result, a disproportionate share of resources is consumed in serving this vast rural territory.

[11] U S WEST Comments at 70.

[12] Kuwamura Affidavit at 2.

[13] First Report and Order ¶ 240.

transport market. As a result, U S WEST will not be allowed to recover these real costs in its interstate rates. Thus, the RTIC rule would skew competition in contravention of the goals of the Telecommunications Act of 1996 (the "Act") and cause U S WEST irreparable harm by disrupting its customer relationships.

U S WEST's Petition for Stay satisfies all of the criteria for obtaining a partial stay of the Commission's First Report and Order. Under the well-established standard for such relief, U S WEST must demonstrate that: (1) it is likely to prevail on the merits on judicial review of the Commission's decision; (2) it will be irreparably harmed absent a stay; (3) a stay will not substantially harm other interested parties; and (4) a stay serves the public interest.[14]

In this case, the Commission's discriminatory RTIC rule is unlawful and unsupported by the record in the access reform proceeding. U S WEST, which has one of the highest RTICs in the industry,[15] will suffer an irreversible loss of revenue and local transport business if this rule is allowed to take effect. More significantly, U S WEST's relationships with existing and potential customers will be irreversibly damaged. In contrast, maintaining the status quo (that is, continuing to apply the RTIC on all purchasers of local switching) during the judicial review process would not cause any competitive harm to third parties. Finally, grant of U S WEST's stay request serves the public interest by preserving free and fair competition in the local transport market and ensuring continued full funding for universal service.

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[14] See, e.g., Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958); Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

II. U S WEST IS LIKELY TO SUCCEED ON THE MERITS

U S WEST's appeal of the First Report and Order is likely to succeed on the merits.[16] First, prohibiting U S WEST from applying the RTIC to traffic that does not use its local transport is not rationally related to the Commission's stated goal of ensuring that CAPs are not charged for local transport when they do not utilize such services.[17] Because U S WEST is required to shift all of the identifiable service-related costs of its local transport to specific local transport rate elements as of January 1, 1998, the only remaining components of the RTIC will be the costs associated with implicit tandem switch and universal service support. Pursuant to the First Report and Order, U S WEST clearly will continue to incur the tandem switching costs contained in the RTIC until January 1, 2000, regardless of whether traffic is transported by U S WEST or not. With respect to the remaining costs contained in the RTIC, the Commission decided to delay the allocation of these costs until the conclusion of an upcoming rulemaking[18] -- a far cry from explaining how the remaining RTIC costs relate to the local transport service that would be provided by CAPs. Thus, the Commission has no basis in the record for allowing the wholesale avoidance of RTIC costs by U S WEST's transport competitors.

The Commission's conclusion in the First Report and Order that there is no

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[15] Kuwamura Affidavit at 2.

[16] U S WEST's Petition for Partial Stay relies on many of the arguments that the NYNEX Telephone Companies ("NYNEX") raised in their Petition for Stay Pending Judicial Review filed with the Commission on July 23, 1997.

[17] First Report and Order ¶ 240.

[18] Id. ¶ 225.

evidence linking the TIC to universal service support[19] is noteworthy because it completely ignores the extensive evidence submitted by U S WEST addressing that very point.[20] The Commission's conclusion is also inconsistent with its own statement earlier in the First Report and Order that "the additional costs of rural transport currently are recovered through the TIC."[21] Therefore, the Commission has failed to address critical evidence directly relevant to an important conclusion. This fact, by itself, warrants reversal of the RTIC rule on appeal.[22]

Second, the Commission's RTIC rule arbitrarily discriminates against U S WEST and in favor of its transport competitors. The artificial price distortion that will result from this rule will give U S WEST's competitors a tremendous advantage in the local transport market. To illustrate the problem, the RTIC represents approximately $203,000 in avoidable implicit support associated with a U S WEST DS3 local transport connection, assuming a maximum of 9000 minutes of use per month.[23] U S WEST's tariffed rate for a DS3 with two miles of transport

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[19] Id. ¶ 242.

[20] See supra Part I.

[21] First Report and Order ¶ 226.

[22] See, e.g., Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983) (holding that an agency rule is arbitrary and capricious if the agency has "offered an explanation for its decision that runs counter to the evidence" before it); Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962) (requiring that agency examine the relevant data and articulate a satisfactory explanation for its action).

[23] See Kuwamura Affidavit at 1. The RTIC would equal approximately $113,000 per year for a U S WEST DS3 local transport connection if usage is assumed to be 5000 minutes of use per month.

is $24,012 per year.[24] In other words, an IXC can realize an 800 percent savings on a single DS3 by providing its own transport and avoiding the implicit tandem switch and universal service contained in the RTIC. Even if a competitor charges the same rate as U S WEST for DS3 service, U S WEST's rate will be uneconomical. Thus, the implicit support provided by the RTIC will be lost as U S WEST's customers move their transport business to support-free local transport services offered by U S WEST's competitors.

Third, the Commission's new method of assessing implicit universal service support is inequitable, discriminatory and non-sustainable. U S WEST and other parties have presented substantial evidence in this proceeding demonstrating that a large portion of the RTIC results from rural transport support flowing from urban transport rates.[25] In the First Report and Order, the Commission agreed that the additional costs of rural transport are recovered through the TIC.[26] The Commission's elimination of this important source of universal service support before a new system of explicit support can be implemented is contrary to Section 254(b)(4) of the Act, which requires that universal service support be "sufficient" and "predictable."[27] If universal service support can easily be avoided (making it non-sustainable), then it is neither "sufficient" nor "predictable." Moreover, the Commission's collection method for universal service support, which

[24] Id.

[25] See supra Part I.

[26] First Report and Order ¶ 226.

[27] 47 U.S.C. § 254(b)(4).

assesses such support only on U S WEST and not on its competitors, is patently inequitable and discriminatory in violation of Section 254(b)(5) of the Act.[28]

Fourth, the Commission's discriminatory RTIC rule is contrary to the access charge scheme implemented in the First Report and Order. The Commission clearly recognized that the costs contained in the current TIC are based on legitimate LEC costs and should continue to be recovered. Therefore, although the Commission shifted the identifiable service-related costs to other rate elements (e.g., tandem switching), it did not disallow any portion of the current TIC. In light of the Commission's recognition that the costs contained in the current TIC need to be recovered (albeit through different rate elements), the Commission's decision to exempt customers who provide their own local transport from the RTIC is an arbitrary and unexplained departure from its overall approach of effecting a revenue-neutral restructuring of access charges.[29]

III. U S WEST WILL SUFFER IRREPARABLE HARM ABSENT A STAY

U S WEST will suffer irreparable injury if it is required to compete in the local transport service market against competitors who are exempt from paying such charges. The inevitable result of the Commission's discriminatory RTIC rule is that current U S WEST customers will shift much, if not all, of their traffic away from U S WEST's local transport in order to reap the benefit of the RTIC exemption. Indeed, U S WEST has calculated that during the next year its customers will be able to avoid up to $192 million in RTIC costs by shifting transport service away

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[28] 47 U.S.C. § 254(b)(5).

from U S WEST.[30] Once these costs are successfully avoided, U S WEST will not be able to recover them.[31] More significantly, once U S WEST's customers have transitioned to competitors or constructed their own transport facilities in order to avoid the RTIC, it will be impossible for U S WEST to re-establish its prior business relationships with these customers.[32]

U S WEST's potential RTIC loss (i.e., $192 million) is directly tied to its $58 million local transport business. If an IXC takes advantage of the discriminatory RTIC rule by shifting traffic from U S WEST-provided transport to CAP-provided transport, the IXC will be able to avoid approximately $202,953 per DS3 on an annual basis, even if the CAP charges the same rate as U S WEST for the DS3 facility. The considerable price differential between transport costs and RTIC costs could lead to severe market distortions. Even if CAPs price their transport at twice the level of U S WEST, IXCs would experience support avoidance savings of $134 million. Indeed, CAPs could price their transport at four times the level of U S WEST and still generate a net price reduction for IXCs. Thus, the ultimate result of the Commission's discriminatory RTIC rule will be the loss of local

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[29] First Report and Order ¶ 46.

[30] Kuwamura Affidavit at 2. This was calculated by multiplying $325 million (the RTIC revenues from U S WEST's 1997 Annual Filing) by .5914 (the U S WEST RTIC percentage as estimated in the First Report and Order).

[31] Because almost all of the RTIC recovers costs of services other than those for which the RTIC is charged, U S WEST's reductions in revenue cannot be offset by a corresponding increase in cost savings.

[32] See Affidavit of Sandra Holmquist at 1 (August 14, 1997).

transport business by U S WEST due to a huge price difference that has nothing to do with economic factors such as service quality, efficiencies, or feature availability.

The RTIC rule is already causing irreparable harm to U S WEST because alternative providers of local transport are relying on the Commission's massive discount to sign up new customers.[33] In fact, LBC Communications, Inc. ("LBC") recently filed comments in connection with NYNEX's Petition for Stay in which it acknowledged that a number of CAPs, including LBC, have created business plans based on the Commission's reformed access regime.[34] These business plans are "premised . . . on economics that include the exemption from the Residual TIC."[35] In effect, CAPs are preparing for an immediate influx of business as traffic is rerouted to avoid the RTIC. Likewise, U S WEST's IXC customers have stated that they intend to exercise all options to reduce their access costs and that the RTIC rule change affords them a "low hanging fruit" opportunity to achieve this end.[36]

U S WEST will continue to lose existing customers and be deprived of the opportunity to attract new customers if the Commission's discriminatory RTIC rule is allowed to take effect. A number of parties commenting on NYNEX's Petition for Stay noted the fact that incumbent LECs such as NYNEX "face significant competition from CAPs" in the transport market.[37] U S WEST is experiencing this

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[33] Id.

[34] LBC Comments at 3.

[35] Id.

[36] Holmquist Affidavit at 1.

[37] MCI Comments at 12; see also WorldCom Comments at 8 (noting the "increasing competitive opportunities for transport service").

competition firsthand – there are more than 16 different CAPs operating within U S WEST's service area, including seven CAPs in Phoenix that are providing service to 95 buildings with 650 miles of fiber. In light of the competitive environment in which U S WEST is operating, it is inevitable that the price distortion caused by the Commission's RTIC rule is having an immediate detrimental effect on U S WEST.[38]

Further, even if the Commission ultimately reverses its position and adopts a RTIC rule that does not discriminate on the basis of the identity of the local transport provider, it is an absolute certainty that IXCs and other customers will not return their transport business to U S WEST. Thus, the harm caused by the RTIC rule to U S WEST's existing and future business relationships is irreparable.[39]

IV. GRANT OF A STAY WILL NOT HARM OTHERS

The Commission's grant of a partial stay of the First Report and Order will not harm third parties. Maintaining the status quo merely would continue to distribute the burden of the implicit support contained in the RTIC equitably among all customers purchasing U S WEST's switched access services. Thus, the sole impact of a stay on third parties would be to prevent U S WEST's customers from shifting their traffic to CAP-provided local transport in order to avoid paying the legitimate and actual costs contained in the RTIC.

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[38] Holmquist Affidavit at 1.

[39] See, e.g., Duct-O-Wire Co. v. U.S. Crane, Inc., 31 F.3d 506, 509-10 (7th Cir. 1994) (finding that interference with "current and prospective contractual relations" and lost "sales and the opportunity to maintain and develop relationships with existing

A stay would not have a negative impact on competition in the local transport services market. As of January 1, 1998, the RTIC will not contain any of U S WEST's costs of providing local transport that would be replaced by CAP-provided transport. Therefore, the equitable distribution of the RTIC among all of U S WEST's switched access customers will not give U S WEST any advantage in the local transport market. Moreover, so-called competition based on the inequitable application of the RTIC is not competition at all and cannot be sustained. The Commission should immediately grant a stay of its discriminatory RTIC rule to avoid creating false economic incentives in the marketplace that cause harm to parties who rely on them.

V. GRANT OF A STAY SERVES THE PUBLIC INTEREST

The Commission's grant of a stay serves the public interest by preserving fair competition in the local transport market and distributing the implicit support contained in the RTIC in an evenhanded manner. It is in the interest of all parties, providers and customers alike, for local transport services providers to compete based on economic factors such as price, quality of service, and efficiency. The Commission's discriminatory RTIC rule would severely distort the transport market by creating a huge price disparity between LEC-provided and CAP-provided local transport services that is comprised entirely of implicit tandem switch and universal service support which the Commission has determined should continue to

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and potential customers" constitutes irreparable harm"); Polymer Technologies v. Bridwell, 103 F.3d 970, 975-76 (Fed. Cir. 1996).

be recovered through the RTIC. This artificial price advantage in the local transport services market is contrary to the public interest.

The Commission's RTIC rule also has the effect of jeopardizing the implicit support contained in the RTIC by providing an easy way for U S WEST's customers to avoid paying such support. While the Act provides for the eventual removal of implicit universal service support, it also provides for replacement explicit support that is "specific, predictable and sufficient."[40] The Commission's Universal Service Order delays this explicit support until 1999, however, so the Commission must grant the instant stay request to avoid creating a shortfall.

For these reasons, the Commission should grant U S WEST's request for a partial stay of the First Report and Order pending judicial review.

Respectfully submitted,

U S WEST, INC.

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Of Counsel,
Dan L. Poole

August 14, 1997

[40] 47 U.S.C. § 254(b)(5).

AFFIDAVIT

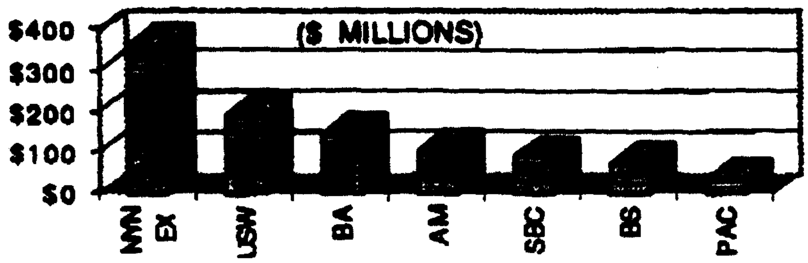
1. My name is George M. Kuwamura, Jr. My title is Manager - Interstate Access Implementation and Issues for U S WEST Communications, Inc. (USWC), a subsidiary of U S WEST, Inc. I am responsible for analysis and implementation of interstate access changes.

2. The current Federal Communications Commission (FCC) Part 69 rules allow the application of the Interconnection Charge (IC) to all local switching minutes that are switched at a Local Exchange Carrier's (LEC) end office switch. The transport facility to carry these minutes may be provided by the LEC, a Competitive Access Provider (CAP) or by the Interexchange Carrier (IXC). Regardless of the provider of the local transport facility, the IC is billed to the IXC that has purchased the Switched Access Service from the LEC.

3. In its Access Reform Order, the FCC modified its Part 69 rules, to become effective on January 1, 1998, to assess the IC only to originating minutes utilizing the LEC's local transport service. This Part 69 rule change will encourage an IXC to divert as much of its local transport service away from USWC through either self-provisioned or CAP facilities. This conversion is not based on normal purchasing criteria, e.g., service quality, efficiencies, feature availability. Rather, it is encouraged because minutes utilizing a CAP for local transport will avoid the assessment of the IC. The FCC also ordered the LECs to remove identified costs from the IC and allocate those cost to the appropriate service categories. This will result in a residual IC that accounts for implicit support for Tandem Switched Transport and universal service.

4. The annual avoidable subsidy cost for an IXC to purchase local transport from a CAP is approximately $202,977 for each DS3 purchased by the IXC. This is calculated by multiplying 9000 * .45 * 672 * $.006215 * 12, i.e., assumed minutes of use * per cent originating minutes * equivalent voice grade channels in a DS3 * current IC * 12 months. The avoidable costs increase as the actual minutes of use in a DS3 exceeds 9000. Clearly, the annual cost associated with purchasing a DS3 facility from a CAP is less than $200,000. The USWC tariffed annual rate for a DS3 with two miles of transport is $24,012. Typically, the CAP charges 10% - 50% less than the LEC rate. Even if a CAP charges the same rate as USWC for a DS3 facility, the IXC could avoid $202,953 ($202,977 - $24,012) per DS3 in annual cost by simply migrating its local transport services.

5. The revenues at risk for USWC resulting from this Part 69 rule change is approximately $192M, $156M for universal service and $36M for Tandem Switched Transport support. This is calculated by multiplying $325M (the IC revenues from the 1997 Annual Filing) by .5914 (the USWC residual TIC percentage estimate in the letter from USTA, filed May 2, 1997, adopted in the Access Reform Order). This ratio reflects the estimated residual remaining in the IC after all identifiable costs are removed. The following chart displays the residual IC by RBOC:



6. Compounding the risks already discussed, an additional $58M associated with dedicated local transport is at stake. If the IXC takes advantage of the regulatory incentive provided with this rule change, not only will it avoid paying the $192M implicit subsidy, the IC, but it will also take away USWC local transport business, $58M. The total cost to USWC could be as high as $250M ($192M + $58M).

7. In the current environment, IXCs would not be able to convert all traffic to CAP facilities because CAPs only have facilities in the most competitively attractive areas. However, this rule change provides the IXC a $192M war chest to fund self-provisioning or CAP construction of facilities for the next stage of competition.

8. I attest that the answers and information provided herein are true and correct to the best of my knowledge, information and belief.

George M. Kuwamura, Jr.

Sworn to and subscribed before me on this 14 day of August, 1997.

CHRISTINE BECKER NOTARY PUBLIC STATE OF COLORADO

My Commission Expires [illegible]

AFFIDAVIT

1. My name is Sandra Holmquist. My title is Director of Access Services for U S WEST Communications, Inc. ("U S WEST"). I am responsible for interstate price cap management.

2. U S WEST operates in a very competitive environment with respect to the provision of local transport. There are more than sixteen different competitive access providers ("CAPs") providing alternative transport service within U S WEST's operating territory. In Phoenix alone, seven CAPs are providing service to 95 buildings with approximately 650 miles of fiber.

3. The residual transport interconnection charge ("RTIC") rule adopted by the Commission allows customers to avoid payment of the RTIC by substituting CAP local transport for U S WEST local transport. This situation makes U S WEST local transport unattractive by linking it with substantial charges that are not related to the costs of providing local transport that would be replaced with CAP local transport. The existence of these non cost-based charges gives an artificial competitive advantage to companies that wish to compete in the provision of local transport because customers can avoid the RTIC by choosing the services of these companies. The huge amount of this additional charge (which increases the price for local transport by as much as 800%) makes the threat to U S WEST immediate and drastic – U S WEST's local transport competitors can recover their entire investment quickly just by leveraging off the RTIC surcharge.

4. The discriminatory RTIC rule is already having a negative impact on U S WEST's ability to compete in the local transport market. U S WEST is losing transport customers and having difficulty attracting new transport customers because CAPs are relying on the Commission's discount to sign up new customers. Interexchange carrier ("IXC") customers have stated that they intend to exercise all options to reduce their access costs and that the modified RTIC rule affords them a "low hanging fruit" opportunity to achieve this end.

5. The harm caused by the RTIC rule to U S WEST's current and potential business relationships is irreparable. Once U S WEST's customers have made a decision to utilize CAP-provided transport or to build their own transport facilities in order to avoid the RTIC, it will be nearly impossible for U S WEST to re-establish its prior business relationships with these customers.

6. I attest that the answers and information provided herein are true and correct to the best of my knowledge, information and belief.

Sandra Holmquist

Sworn to and subscribed before me on this 14th day of August, 1997.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 14th day of August, 1997, I have caused a copy of the foregoing **PETITION FOR PARTIAL STAY PENDING JUDICIAL REVIEW** to be served via hand delivery upon the persons listed on the attached service list.

Kelseau Powe, Jr.

(CC96262G.COS/BM/ss)

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